

MEMO# 12523

August 23, 2000

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION AMENDS PROPOSED POLICY STATEMENT ON INTERNET DISCUSSION SITES

[12523] August 23, 2000 TO: INTERNATIONAL COMMITTEE No. 29-00 RE: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION AMENDS PROPOSED POLICY STATEMENT ON INTERNET DISCUSSION SITES On August 15, 2000, the Australian Securities & Investments Commission (ASIC) issued an exposure draft of an interim policy statement on Internet discussion sites (Exposure Draft) that revises earlier guidelines in response to Institute comments. The new Exposure Draft revises ASIC's proposed guidelines for Internet discussion sites (IDS), published for comment in June 2000, to limit expressly the extraterritorial application of the policy consistent with the concerns raised by the Institute. As recommended by the Institute, ASIC makes clear that its policy regarding IDS only would be applicable to an Australian IDS. A copy of the new Exposure Draft and the Institute's earlier comment letter is attached. Under the original ASIC proposal, ASIC would require an entity providing for the exchange or dissemination of information, opinions, and advice about securities on an IDS either to obtain a license to engage in the "investment advice business" or to operate under the proposed guidelines. The IDS guidelines would require the IDS operator, among other things, to provide certain disclosures and warnings to (1) persons viewing the information, opinions, and advice posted on an IDS and (2) persons making or altering the postings. The original proposal did not limit specifically the application of the guidelines to Australian facilities. Concerned that ASIC's proposal on IDS would appear to assert jurisdiction over a mutual fund web site that included a discussion site whether or not the mutual fund organization intended to market fund shares in Australia, the Institute submitted a comment letter on July 24 urging ASIC to reconsider the proposal and to apply the approach it took in its 1999 Policy Statement regarding the offers of securities on the Internet.¹ The Institute was of the view that this approach would apply appropriately ASIC's authority to those instances where there are investor protection concerns in Australia. In response to the Institute's comments, ASIC revised the proposed guidelines in the Exposure Draft. As suggested by the Institute, ASIC's discussion now specifically states that its policy is to ensure that its approach is consistent with the principles adopted by IOSCO for dealing with jurisdictional questions arising from cross-border offers of securities or investment services and that the IDS policy is 1 In its 1999 policy statement on securities web sites, which is similar to the approach taken by IOSCO and the US Securities and Exchange Commission regarding securities web sites, ASIC took the position that it will not regulate offers, invitations, and advertisements of securities on the Internet that are accessible in Australia if there is (a) no misconduct, and (b) the offer,

invitation, or advertisement: (1) is not targeted at persons in Australia; (2) contains a meaningful jurisdictional disclaimer; and (3) has little or no impact on Australian investors. 2consistent with its 1999 policy statement on the offer of securities on the Internet. ASIC notes that it has taken particular care to ensure that the guidelines for IDS do not apply in an unintended way to IDS that operate outside of Australia. Specifically, ASIC only would apply its IDS policy to an Australian IDS. ASIC would consider an IDS to be an Australian IDS if it (1) targets people in Australia or (2) operates within Australia. ASIC would treat an IDS as targeting people in Australia if the IDS expressly offers the services or makes invitations to people in Australia to use the facility or pushes information about the facility to people who have Australian addresses. ASIC would consider an IDS to be operating in Australia if the IDS is operated by a person who provides the IDS facility from an address within Australia; involves material for postings being forwarded to an Australian address; is hosted from an Australian Internet address; or is offered as, or claims to be, a service or facility offered from Australia. In addition to clarifying the jurisdictional application of the IDS policy statement, ASIC has amended the policy to prohibit persons that are licensed to conduct investment advice business to operate an IDS within the IDS guidelines; licensees must operate IDS as a licensed activity. The revised guidelines also specify that an IDS may not operate under the guidelines and must obtain a license if the IDS involves the giving of securities advice. The revised guidelines would impose certain obligations and disclosure requirements on IDS operators in addition to those originally proposed. Although the original proposed policy statement contemplated implementation of the policy by August, in response to comments on the proposed statement, ASIC seeks further comment on the Exposure Draft, especially for certain aspects of the policy framework. ASIC specifically seeks comment on whether the limitations on an unlicensed IDS might impede unnecessarily legitimate commercial activities by IDS operators and what, if any, additional disclosures and customer protections should be required of licensees that operate IDS.

Jennifer S. Choi Assistant Counsel Attachments Attachment no. 1 (in .pdf format)